IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

R.S.A. No.5517 of 2003
Date of Decision:- 27.10.2006

Subhash Chander ....Appellant.

through
Ms.Seema Narang, Advocate

vs.

The Panipat Central Co-op.Bank Ltd. and others ....Respondents

through
Mr.V.P.Malik, Advocate.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This regular second appeal is directed against the judgments and decrees dated 6.6.2002 and 3.6.2003 passed by the learned Civil Judge (Sr.Division), Panipat and the learned Additional District Judge, Panipat respectively whereby the appellant's suit for permanent injunction was dismissed and the said judgment and decree has been further affirmed by the First Appellate Court.

An injunction suit was filed by the appellant on the ground that the factory premises had been auctioned by the respondents without any notice to him. According to him, a Cash Credit Limit Facility of Rs.50,000/- was availed by him in the year 1986 from the Karnal Central Co-operative Bank which was later on enhanced to the tune of Rs.2 lacs but due to the alleged loss suffered by him in business, he could not pay the interest thereupon. According to the appellant, even if he was a defaulter in

repayment of the loan amount yet the mortgaged property could not be auctioned without giving him an opportunity to show cause.

Both the Courts have concurrently held that a sum of Rs.1,18,874/- was recoverable from the appellant as on 31.12.2001 which stood increased to Rs.2,08,076/- immediate before filing of the suit. Both the Courts have found that the appellant never disputed his liability and from the documents including the sale deed Ex.D-2, it stood established that the subject property was mortgaged by the appellant as a surety for availing the loan facility from the bank. It has been further found as a matter of fact that the appellant was given an opportunity to repay the due amount before starting the auction proceedings as could be seen from the Ex.PA which has been duly proved on record. The Courts below have, thus, concluded that no fault can be found with the procedure followed or the action initiated by the respondents. On the contrary, it has been further held that the appellant filed the suit without serving an advance notice as contemplated under Section 124 of the Haryana Co-operative Societies Act, 1974 and, thus, the suit is not maintainable for want of requisite notice.

Aggrieved, the plaintiff has preferred this regular second appeal.

In order to give more indulgence and opportunity to the appellant to discharge his own liability, this Court on 21.3.2005, keeping in view the stand taken on his behalf, directed that if the appellant shall deposit a sum of Rs.2.13 lacs with the respondents at the first instance, his case shall be taken up for hearing, failing which “the appeal shall be deemed to have been dismissed.”

Learned counsel for the appellant states that in order to ensure

compliance of the above-stated order, two letters have been written to the appellant who, however, has failed to respond.

Learned counsel for the respondent-Bank states that no amount has been deposited by the appellant in terms of the undertaking given before this court on 21.3.2005.

In this view of the matter and keeping in view the order dated 21.3.2005 passed by this Court, this appeal is accordingly dismissed.

October 27, 2006 **(SURYA KANT)**
poonam **JUDGE**